Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1974

No. 74-1503

EDWARD KECKEISEN,

Petitioner,

vs.

INDEPENDENT SCHOOL DISTRICT 612, Glenwood, Minnesota; RICHARD KAUS, Chairman of School Board, Independent School District 612; JOANNE SOLMONSON, Clerk of School Board, Independent School District 612; LeROY KNUTSON, Member of School Board, Independent School District 612; ROBERT ROBARDS, Member of School Board, Independent School District 612; RICHARD THOMPSON, Member of School Board, Independent School District 612; ELAINE BENNETT, Member of School Board, Independent School District 612; JERRY LEEDAHL, Member of School Board, Independent School District 612,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI BY EDWARD KECKEISEN

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PETITION FOR WRIT OF CERTIORARI BY EDWARD KECKEISEN

Petitioner, Edward Keckeisen, prays that this Court issue its Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit to review the judgment of that Court in File No. 74-1326, dated February 28, 1975.

OPINIONS BELOW

The opinion of the United States District Court, District of Minnesota, Sixth Division, by Chief Judge Edward J. Devitt, is reproduced in the Appendix hereto, beginning at page 33.

The opinion of the United States Court of Appeals for the Eighth Circuit by Chief Judge James H. Meredith is reported in 509 F.2d 1062, and is reported in the Appendix hereto, beginning at page 35.

JURISDICTION

The decision of the United States Court of Appeals for the Eighth Circuit was filed February 10, 1975. Petition for Rehearing was then timely filed, but was denied on February 28, 1975. Judgment was also entered on February 28, 1975, which judgment is here sought to be reviewed.

This Court has jurisdiction to review pursuant to 28 *U.S.C.*, Section 1254 (1).

ISSUE

Did the United States Court of Appeals for the Eighth Circuit err in holding that the regulation, as promulgated by the Respondents in this action, prohibiting marriage between an administrator and a physical education teacher, was permissible under the Constitution, and that the Petitioner could be removed from his position of high school principal based on that regulation, even though Petitioner and his wife advised the Board she would resign if the regulation was held Constitutional?

Did the United States Court of Appeals for the Eighth Circuit err when it held that the school board could terminate the Petitioner's contract of employment based on anticipatory problems?

APPLICABLE CONSTITUTIONAL AND STATUTORY PROVISIONS

The First, Fourth, Fifth, Ninth and Fourteenth Amendments to the *United States Constitution* are set forth in the Appendix beginning at page 23.

The Minnesota Statute involved, *Minn. Stat.* 125.12, is set forth in the Appendix beginning at page 26.

STATEMENT OF THE CASE

The facts in the case are simple and undisputed. The Petitioner was a certificated principal at the Glenwood High School in Minnesota, which is a part of Independent School District 612. Petitioner has made a motion for a temporary restraining order restraining Respondents from terminating the Petitioner's contract of employment as principal. The Petitioner is a tenured teacher under the *Minnesota Statutes* Section 125.12 and, therefore, his termination is subject only to termination pursuant to *M.S.A.* 125.12.

On June 12, 1972, the Respondent school board adopted the following policy, to-wit:

> "Employment of married couples:
>
> It shall be the policy of the Board of Education not to employ the combination of husband and wife

in the schools of the District where a conflict of interest could arise; said policy is to apply to the following:

1. Administrator-teacher relationship.

2. Husband and wife combination in the same building.

3. All other situations where a conflict of interest occurs."

That in December of 1972 said Petitioner married Lois E. Korbel and that said Lois E. Korbel was and is employed as a physical education teacher and a girls' athletic coach; that Petitoner has been in the employment of Respondent for a period of at least three years and that his wife has been in the employment of the Respondent for a period of at least six years.

Respondent gave notice to the Petitioner on March 1, 1973, that the board was proposing to terminate this employment contract effective at the end of his then annual contract terminating June 30, 1973, though as heretofore stated, Petitioner was a tenured teacher under Minnesota Statutes and, therefore, said contract would not technically terminate but would automatically renew each year unless legally terminated pursuant to *M.S.A.* 125.12.

Because of the charges made against Petitioner on the basis of his marriage, plus a charge of "insubordination" under the statute, Petitioner demanded a public hearing to determine under oath what the particular charges were; the public hearing was held on the 29 day of March, 1973, and on the same day the school made findings of fact and conclusions of law determining that Petitioner's contract of employment should be terminated at the end of his then

annual period, June 30, 1973; that in the school board findings the charge of "insubordination" was dropped and the only charge remaining was that of his marriage to said Lois E. Korbel in violation of the recently adopted rules of the Respondent.

There is no testimony nor findings in the record to show any lack of efficiency, capability or competency on behalf of the Petitioner.

The facts show that at the time of employment of either Petitioner or his wife, the Respondent did not have a policy or a rule or a regulation prohibiting the marriage as specified above but that this rule was adopted only on the 12 day of June, 1972, after the prospective marriage of the Petitioner and said Lois E. Korbel was known of by the Respondents.

Petitioner on the 25 day of January, 1973, advised the school board that he and his wife felt this rule was unconstitutional but in the event that the rule was held constitutional, that his wife would resign. The verbatum letter is as follows:

January 25, 1973

Winter and Nelson, Ltd.
Old Pope County Bank Building
Glenwood, Minnesota 56334

Gentlemen:

I am in receipt of your letter as of Friday, January 20, 1973; we have consulted with the attorney from the Minnesota Association of Secondary School Principals' office and we feel that the board policy is unconstitutional and unreasonable, therefore, neither of us plans to resign.

Hereafter Mr. Halverson, Assistant Principal, will be responsible for the evaluation of duties of Mrs.

Keckeisen. We wish to inform you, however, that if the courts decide that the board policy is unconstitutional, my wife, Lois, will resign.

Thank you.

Sincerely,

/s/ Edward Keckeisen
/s/ Lois E. Korbel

The Petitioner has proceeded in Federal Court pursuant to Section 1343 of Title 28 and Section 1983 and 1985 of Title 42 of the *U. S. Code* and alleged a violation of the Ninth and Fourteenth Amendments to the *U. S. Constitution* as an unconstitutional invasion of privacy, denying Petitioner equal protection and due process under the Constitution.

The Petitioner further alleges that the action taken by the Respondent school board was arbitrary, unreasonable and unwarranted, oppressive, under an erroneous theory of law, and without adequate and proper evidence to support any of its findings and in violation of the teacher (administrators and principals are defined as teachers) termination statute, Section 125.12, *M.S.A.*

On the 12 day of March, 1974, the Honorable Edward J. Devitt, Chief Judge of the United States District Court, District Court of Minnesota, Sixth Division, filed his decision dismissing said action. The case was then appealed to the United States Court of Appeals for the Eighth Circuit, where the decision of the District Court was affirmed.

BASIS FOR FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE

In *Whitner v. Davis,* 410 F.2d 24 (1961), the defendants contended that plaintiff had failed to state a claim

under the Civil Rights Act because there is no constitutional right to public employment. The Court held:

> While there may be no constitutional right to public employment as such, there is a constitutional right to be free from unreasonably discriminatory practices with respect to such employment. *Rolfe v. County Board of Education of Lincoln County, Tennessee,* 6 Cir., 391 F.2d 77, 80; *Wall v. Stanly County Board of Education,* 4 Cir., 378 F.2d 275, 277. It is also established that, apart from discrimination, public employment may, under some circumstances, be so supervised and controlled as to raise the question of whether there has been an impairment of constitutional rights. See *Pickering v. Board of Education,* 391 U.S. 563, 88 S. Ct. 1731, 20 L. Ed.2d 811.

Further, in the case of *Brenden v. Independent School District 742,* 342 F. Supp. 1224 (D. Minn. 1972), aff'd. at 477 F.2d 1292 (1973), the court held that it did indeed have jurisdiction over school districts and that school districts were persons within the meaning of 42 *U.S.C.,* Section 1983 and 28 *U.S.C.* Section 1343. While a statewide organization such as the Minnesota State High School League is not involved in the instant case, it would seem that the application of the Civil Rights Act to a voluntary association and individual school districts is applicable in this case to the individual school district. The district court in the *Brenden* case held on the jurisdictional issue and the cause of action issue as follows:

> The Court has jurisdiction over this cause of action by reason of 42 U.S.C. Section 1983 and 28 U.S.C. Section 1343 (3). Under 42 U.S.C. Section 1983, any person who suffers the deprivation of civil rights guaranteed to him by the Constitution, by persons acting

under color of state law may bring suit for the redress of those deprivations. It is clear that the State High School League and the defendant school districts are persons within the meaning of 42 U.S.C. Section 1983. It is also clear to this Court that the defendants are acting under color of state law. Although the Minnesota State High School League is a voluntary organization, the original allowance for public high schools to join such an association or organization is authorized pursuant to Minnesota law. Minn. Stat. Ann. Section 192.12. In addition, the rules governing League members are promulgated pursuant to a procedure which integrally involves the member school districts in the decision-making process. Beyond this, the ultimate enforcement of the rules becomes the responsibility of the member schools and the public officials of those schools and school districts. In such a situation, where there is a tremendous public interest in educational functions, and where the public school machinery of the state is so involved in the effectuation and enforcement of rules which bind all public high schools in the state, the Court is left with no conclusion other than that defendant Minnesota State High School League and the defendant school districts are acting under color of state law. Because the defendants are persons acting under color of state law, and because the defendants allege a deprivation of civil rights under the fourteenth amendment, the Court does have jurisdiction to determine the questions raised in this action on their merits. (Footnote omitted.)

And the Eighth Circuit Court of Appeals specifically agreed with the above language at 477 F.2d 1295:

> We agree with the trial court and affirm its decision in this regard. See, Mitchell v. Louisiana High School Athletic Association, 430 F.2d 1155 (5th Cir. 1970); Louisiana High School Athletic Ass'n v. St. Augustine High Sch., 396 F.2d 224 (5th Cir. 1968); Oklahoma High School Athletic Association v. Bray, 321 F.2d 269 (10th Cir. 1963); Reed v. The Nebraska School Activities Association, 341 F. Supp. 258 (D. Neb. 1972); Sex Discrimination in High School Athletics, *supra* at 350.

It is further true because of the letter sent by Petitioner to the school board dated January 25, 1973, where he and his wife specifically stated that the wife would resign if the rule was found constitutional and, nevertheless, the school board proceeded against the Petitioner and not his wife; otherwise, the Petitioner and his wife could have satisfied the rule of the school board if said rule were found to be constitutional. An opinion based on these facts and the law material thereto is not covered with statewide application or state law and applies only to this single school district and this single principal.

REASONS FOR GRANTING THE WRIT

THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT HAS DECIDED FEDERAL QUESTIONS OF SUBSTANCE NOT IN ACCORD WITH PREVIOUS DECISIONS OF THIS COURT

Marriage is a Fundamental Civil Right to be Protected Under the United States Constitution

Marriage is a civil right which will be protected under the *Constitution of the United States* under the Ninth Amendment right to privacy, as applied to the States by the Fourteenth Amendment. This Court has held in *Loving v. Commonwealth of Virginia,* 388 U.S. 1, 87 S. Ct.

1817 (1967), that "Marriage is one of the basic civil rights of man, fundamental to our very existence and survival," and held that the Equal Protection Clause of the Fourteenth Amendment requires consideration of whether classifications drawn by any statute constitute arbitrary and invidious discrimination.

In the case at hand, what we have is not a prohibition against marriage, as in the *Loving* case, but we have a situation where if two people are teachers in a school district and want to marry, the regulation in the instant case does not prohibit that marriage but requires that one of the parties resign his or her position in the school district. It is the Petitioner's contentions that this is an unconstitutional invasion of privacy and, further, is contrary to Minnesota law. The requirements for termination of a tenured teacher or principal are set out fully in the Appendix hereto, Section 125.12, *M.S.A.* (A-26) It is the contention of the Petitioner that the requirements of that statute are not satisfied when the school board arbitrarily terminates his contract because he and the teacher got married.

The school board acted arbitrarily and capriciously in terminating the Petitioner's contract, anticipating that the situation would cause problems within the school district. While this case is distinguishable from dealing with the First Amendment freedoms of students, it would seem only reasonable that the test for the expulsion of a student should be not more stringent than the standards for the termination of a teacher's contract.

The standards as set forth in *Tinker, et al. v. Des Moines Independent Community School District, et al.*, 89 S. Ct. 733, 393 U.S. 503 (1969) make it quite clear that in the abridgement of constitutional rights, which this Court

has found marriage to be, *Loving v. Virginia, supra,* that the state must have some showing of disruption. It may probably be unnecessary to have material and substantial disruption but at least the school board should be required to show that there is some disruption and not rely on a series of "could cause", "might cause" or "perhaps will cause" kinds of argument to show that their policy is not in balance, placing a greater burden on marriage than in protecting the board in its fundamental duty to provide education to youngsters in a school district.

In this case, while the Petitioner and his wife were together in the school building for nearly a half a year, there is not one shred of evidence anywhere in the record that shows there was any disruption in any manner. In addition, more than adequate supervision of the wife-teacher job was shown to be required by administrators other than her husband.

The regulation that this appeal is analogous to the rules that were appealed in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), while a conflict of interest policy, may very well seem non-discriminatory on its face, its effect is that of discrimination. If this policy is allowed to stand, then school districts throughout the country could proceed to eliminate women teachers merely by passing the rule that teachers within the system may not be married to other teachers within the system. If this policy were to be equitable, school boards could remove teachers without benefit of following the requirement of Minnesota Statute provisions and in a highly discriminatory manner, thereby further discriminating not only against marriage but discriminating on the basis of sex.

CONCLUSION

The action taken by the board is unreasonable, arbitrary and is not substantiated by the evidence and does not have a rational basis in law. There is no violation of *M.S.A.* 125.12 of the Minnesota termination statute which requires specific grounds for termination of a teacher, wherein administrators, principals and teachers are all defined as "teachers."

There is no showing that the ability of the Petitioner, his relations with the faculty or students or the board is in any way diminished or compromised or that any of his administrative activities as principal would be prejudiced or affected by his marriage. There is no showing of disruption and certainly not substantial disruption as required by the U. S. Supreme Court in these school cases. The Petitioner has in good faith advised the board that if for some reason the law is held constitutional, his wife will resign and, therefore, there is no actual violation but only an arbitrary proceeding by the board against the Petitioner without any evidence to substantiate their arbitrary and capricious rule and action since such rule was passed.

This case offers an excellent opportunity for this Court to clarify its rulings on substantial disruption pertaining to teachers.

The Petitioner, therefore, respectfully asks that this Court grant his Writ of Certiorari.

Respectfully submitted,

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